

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-220220.2

DATE: October 7, 1985

MATTER OF: Radionics, Incorporated--Reconsideration

DIGEST:

Protest filed more than 10 working days after protester learned of initial adverse agency action--agency determination that protester's proposal was technically insufficient--in response to protest filed with agency is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.

Radionics, Incorporated, requests reconsideration of our notice of September 10, 1985, which dismissed its protest against the award of a contract for certain items under United States Marine Corps (USMC) request for proposals No. M67004-84-R-0187.

We dismissed the protest as untimely because it was not filed with our Office within 10 working days following initial adverse agency action on a protest filed with the USMC. Our action was in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), which provide that when a protest has first been filed with the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester knew or should have known of initial adverse agency action on its protest to the agency.

We affirm the dismissal.

The record shows that by telegram dated July 2, 1985, to the agency, Radionics initially protested the award of a contract under this solicitation to any firm other than itself. It challenged the agency's method of evaluating drawings which were submitted to demonstrate the technical sufficiency of Radionics' proposal and contended that the deficiencies found in its drawings were insignificant. The

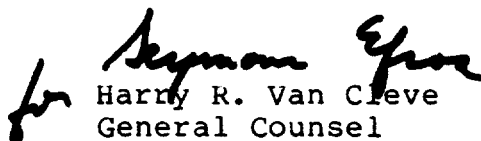
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contracting officer responded to the protest by letter of August 1. The letter stated that the method of evaluation used was proper, cited examples of technical problems with Radionics' drawings and concluded that Radionics' proposal was "technically insufficient." Radionics then requested that the agency reconsider acceptance of its proposal, but, on September 9, before receiving a response to the reconsideration request, it filed its protest with this Office.

We considered the contracting officer's letter of August 1 to constitute initial adverse agency action on Radionics' protest. Since Radionics' subsequent protest to our Office was not filed until September 9, more than 1 month later, we dismissed the latter protest as untimely.

In its request for reconsideration, Radionics essentially disputes our characterization of the August 1 letter as adverse agency action. Radionics argues that the August 1 letter did not represent an adverse agency action on its protest because the letter only stated that its proposal was technically insufficient, not that its protest was officially denied. It adds that it continued to pursue the matter with the agency after receiving the August 1 letter and never received a denial of its protest. Radionics believes that it filed its protest with our Office prior to any adverse agency action, since it has not received an official denial of its protest from the agency, and its protest therefore is timely.

We disagree. Adverse agency action is any action or inaction which is prejudicial to the position taken in a protest filed with an agency. Weitzul Construction, Inc., B-216036, Feb. 12, 1985, 85-1 C.P.D. ¶ 184. Even if we assume that the August 1 letter was not a denial of Radionics' protest, the contracting officer's determination that Radionics' proposal was not technically sufficient was prejudicial to the firm's protest that award not be made to any firm other than itself. Moreover, the fact that Radionics continued to pursue this matter with the agency does not extend the time for protesting to GAO. BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44.


Harry R. Van Cleve
General Counsel